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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,338	10/23/2003	Terri L. Butler	BP. 028 US2	8488

7590 11/14/2008
Kathleen R Terry
Bioenergy Inc
13840 Johnson Street NE
Ham Lake, MN 55304

EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT	PAPER NUMBER
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1623

MAIL DATE	DELIVERY MODE
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11/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,338	Applicant(s) BUTLER ET AL.	
	Examiner TRAVISS C. MCINTOSH III	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The Amendment filed 5/27/08 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claims 1 and 2 have been amended.

Claims 4-17 have been canceled.

Remarks drawn to rejections of Office Action mailed 3/17/08 include:

112 1st paragraph rejections: which have been overcome by applicant's amendments and have been withdrawn.

An action on the merits of claims 1-3 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office action.

Claims 1-3 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Omran et al. (of record), in view of St. Cyr et al. (US 6,218,366).

Omran et al. teach that ribose improves myocardial function and quality of life in congestive heart failure patients (see title). Omran teach administering 15 g/day of ribose to alleviate problems associated with CHF. What is not taught is to administer an additional vasodilator, nor to administer 2-10g 1-4 times a day.

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St. Cyr et al. teach to administer ribose and an additional vasodilator in patients to increase the tolerance to hypoxia.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Omran and St. Cyr to produce the instant invention with these references before them. One of ordinary skill in the art would have a reasonable expectation of success in determining the optimum dosages, as the art teaches administering 15 grams/day and the instant application teaches a broader range of 2-10g 1-4 times/day, thus encompasses administering 15g/day. Likewise, hypoxia is known to be associated with CHF and can occur as a result of CHF. One would be motivated to use ribose as claimed as Omran et al even state that with the known difficulty in managing many CHF patients, ribose should be strongly considered as a therapeutic option in this heart disease state.

It is noted that this rejection was made on 6/16/2006, and the examiner withdrew the rejection in light of applicants filing a statement under 103(c), however, it is noted that the 103(c) preclusion does not apply to a reference which is a 102(a) date reference. Moreover, it is noted that the Omran reference was seen to be published on 6/25/2001, which is before the instant applications effective filing date of 6/29/2001.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAVISS C. MCINTOSH III whose telephone number is (571)272-0657. The examiner can normally be reached on M-F 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Traviss C McIntosh III/

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November 10, 2008